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June 23, 2003

Mary Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

Re: D.T.E. 03-63 Investigation by the Department of Telecommunications and Energy to establish a surcharge to recover prudently incurred costs associated with the provision of wireline Enhanced 911 services, relay services for TDD/TTY users, communications equipment distribution for people with disabilities, and amplified handsets at pay telephones.

Dear Ms. Cottrell:

Please accept this letter in lieu of comments in the above captioned proceeding on behalf of AT&T Communications of New England, Inc. ("AT&T"), pursuant to the May 29, 2003, *NOTICE OF INVESTIGATION, PUBLIC HEARING AND INTERVENTION; REQUEST FOR DATA AND SURCHARGE PROPOSALS; AND REQUEST FOR COMMENTS BY THE DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY* ("Notice").

This proceeding follows the Department's *Order Instituting Rulemaking*, D.T.E. 03-24 (March 13, 2003) ("*Order*") arising out of the Acts of 2002, c. 239 *et. seq.*, ("*Legislation*"). The rulemaking is intended to establish a funding mechanism for Enhanced 911 service ("E-911"), relay services for users of telecommunications device for the deaf ("TDD/TTY"), communications equipment distribution program for people with certain disabilities ("adaptive equipment"), and amplified handsets at Massachusetts pay telephones.¹ Specifically, in the proposed rules ("Proposed Rules") the Department of Telecommunications and Energy ("Department") has established a surcharge ("Surcharge"), which would be collected from telecommunications consumers as a means to ensure the continued provision of these services.

¹ *ORDER*, at 1-4.

In its *Notice*, the Department has divided this proceeding into two phases. In the first phase, the Department will establish an interim surcharge based upon estimated data from the State Emergency Telecommunications Board (“SETB”) and Verizon New England Inc. d/b/a/ Verizon Massachusetts (“Verizon”).² In the second phase, the Department will establish a permanent surcharge.³

Pursuant to the Department’s direction, on June 13, 2003, Verizon and the SETB submitted their joint *Interim Surcharge Proposal* (“*Proposal*”) in which they propose an interim surcharge of \$.85.

AT&T’s comments in this proceeding echo many of comments and concerns raised by AT&T in the D.T.E. 03-24 proceeding.⁴ AT&T continues to support the Department’s actions in this proceeding, and sets forth its concerns below.

I. The Deficit Figure Remains Unsubstantiated

As AT&T set forth in its *AT&T 03-24 Comments* and *AT&T 03-24 Reply Comments*, the E-911 fund deficit determination is an essential element of this rulemaking. In fact, as the Department noted in its 03-24 *Order* a significant component of its obligations under the Legislation is the determination of the portion of directory assistance revenue (“DA Revenue”) that is to be used to offset the deficit.⁵ Verizon estimated originally that the deficit figure was \$28.6 million at the end of 2001, and by 2002 had grown to \$40 million.⁶ Verizon now claims, in fact, that the correct deficit figure is actually \$43.1 million.⁷ Certainly a \$3 million discrepancy is worthy of objective and third-party verification. Thus in D.T.E. 03-24, AT&T suggested that an audit be performed to verify the amount claimed by Verizon.⁸

Notwithstanding AT&T’s recommendation for further review, Verizon’s position with respect to the deficit is that no further record need be developed. In fact, Verizon’s position is that an audit performed five years ago is sufficient to substantiate the current

² *Notice*, at 1.

³ *Id.*

⁴ See D.T.E. 03-24, *AT&T letter in lieu of comments*, April 22, 2003 (“*AT&T 03-24 Comments*”); D.T.E. 03-24, *AT&T letter in lieu of reply comments*, May 9, 2003 (“*AT&T 03-24 Reply Comments*”).

⁵ *Order*, at 2.

⁶ *Id.*

⁷ *Proposal*, at 2.

⁸ *AT&T 03-24 Comments*, at 2-3; *AT&T 03-24 Reply Comments*, at 2.

deficit amount.⁹ Verizon's position is untenable in this regard. To the extent that an audit was conducted five years ago, it is speculative whether or not any such findings would be relevant today. In fact, Verizon recently estimated that in one year alone, from 2001 to 2002, the deficit grew from \$28.6 million to \$40 million¹⁰ (and based upon the information provided in the *Proposal*, the 2002 deficit figure is now claimed to be \$43.1 million).¹¹ Accordingly, a new audit should be performed to include the time period from 1998 to the present.

Notwithstanding the strong need to verify the deficit figure, Verizon and the SETB's *Proposal* contains no such information. To the contrary, the *Proposal* merely lists the deficit as a line item, with no supporting documentation. AT&T does not at this time dispute the deficit figure. In fact, AT&T has so little information by which to form a basis of opinion on the deficit amount, it is tantamount to a leap of faith. Accordingly, AT&T renews its recommendation to the Department that an independent audit be performed to establish, in an empirical fashion, the deficit fund amount.

II. Revenue In Addition To Directory Assistance Appears Not to Have Been Taken Into Consideration In The Proposal

As AT&T similarly set forth in its *AT&T 03-24 Comments* and *AT&T 03-24 Reply Comments*, the calculation of the Surcharge should ensure that all relevant revenue, including that received by Verizon, or correctly assessed accounts payable to Verizon, are included. These revenue sources are further described below.

As AT&T set forth in its *AT&T 03-24 Comments*, in addition to DA Revenue, Verizon also receives additional revenue from competitive local exchange carriers ("CLECs") to help defray E-911 expenses, in accordance with the terms of interconnection agreements.¹² As an example, per *Agreement between New England Telegraph Company d/b/a BA and AT&T Communications of New England, Inc.*, effective date April 13, 1998, AT&T is obligated to pay Verizon \$.05 per line per month for UNE switched lines for E-911 interconnection.¹³ Similar obligations of CLECs to provide E-911 compensation to Verizon are found in additional interconnection agreements between Teleport Communications Boston and Verizon, as well as Sprint Communications Company, LLP and Verizon.

⁹ D.T.E. 03-24, *Reply Comments of Verizon Massachusetts*, at 5.

¹⁰ D.T.E. 03-24, *ORDER INSTITUTING RULEMAKING ("Order")*, issued March 13, 2003, at 2.

¹¹ *Proposal*, at 2.

¹² *AT&T 03-24 Comments*, at 2-3.

¹³ *Id.*

In addition to payments made by carriers to Verizon subject to interconnection agreement obligations, carriers are also billed by Verizon for E-911 costs under Verizon's Massachusetts Tariff 17. These E-911 charges are assessed on invoices sent in accordance with the purchase, by carriers, of other wholesale services from Verizon. The proceeds from the above-described obligations of CLECs to compensate Verizon for E-911 expenses should be included in any calculation of the Surcharge. Finally, payments made by carriers pursuant to the M.G.L. c. 6A §18F annual assessment, based upon annual operating revenues, should similarly be included in the computation.

Despite the fact that Verizon receives E-911 funding from this myriad of origins, the *Proposal* fails entirely to account for these additional revenue sources. Instead, the financial spreadsheets provided as attachments to the *Proposal* seem to ignore these additional revenue sources.

Additionally, as AT&T urged in *AT&T 03-24 Reply Comments*, the Department should also find that the Surcharge promulgated by the Legislation supplants prior E-911 cost recovery mechanisms. Per the Proposed Rules, the Surcharge amount will ultimately be appropriated such that it will be based on actual expenses that will be incurred for the provision of E-911. Accordingly, obligations by CLECs to pay Verizon for E-911 charges, including the contractual and tariff charges discussed above, will no longer be required. If carriers were required to make continued payments to Verizon for E-911 charges, and Verizon additionally received Surcharge proceeds to defray E-911 costs, it would result in inequitable inefficiency, and potential double recovery. Moreover, the contractual and tariff E-911 charges imposed on carriers by Verizon would likely be passed onto consumers. As such, the Department should rule that the Surcharge replace all prior E-911 cost-recovery mechanisms.

III. The Figures Provided In The Proposal Are Entirely Unsubstantiated By Support Documentation, Thus Parties Are Essentially Being Asked To Take Them On Their Face As Valid.

As discussed above, the financial figures provided by Verizon and the SETB are unsubstantiated by support documentation. Specifically, for instance, Line 18 of *Proposal* Attachment 'A' is intended to represent an estimate of "uncollectible revenues." According to the proposal, these estimates derived from a "composite number based upon Verizon MA's 2002 uncollectibles."¹⁴ As stated above, AT&T cannot dispute whether these estimates are reasonable, or more importantly, whether these figures are "prudently incurred." While AT&T agrees that uncollectible revenue should in fact be factored into the surcharge formula, the financial figures in the *Proposal* should be supported by documentation that can be reviewed by the Department and other parties, to validate the figures provided.

¹⁴ *Proposal*, at 2.

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Additionally, AT&T respectfully renews its request from the *AT&T 03-24 Reply Comments*, that the Department require Verizon to distribute to requesting carriers in this proceeding, copies of Verizon's E-911 annual funding report for the preceding five (5) years. These reports will assist all carriers in better understanding the E-911 costs as detailed by Verizon.

Lastly, pursuant to the Department's *Notice*, "[t]he amounts collected under the interim surcharge will be subject to reconciliation once actual data are filed."¹⁵ The Department should ensure that the 'actual data' is provided in such a way that it is amenable to objective review and analysis. This will ensure that, to the extent any of the figures provided in the *Proposal* were incorrect; they will be subject to corrective true-up.

Please feel free to contact me with any questions you may have in this or any other regard.

Yours truly,

Jeffrey Fialky

cc: Joan Evans, Esq., Hearing Officer
Michael Isenberg, Esq., Director of the Telecommunications Division
April Mulqueen, Assistant Director of the Telecommunications Division

¹⁵ *Notice*, at 1.